THE HON'BLE SRI JUSTICE C.V. RAMULU

Tuesday, 27th day of February,2007

W.P.No.25206 of 2003

Between:-

R S F P D Farm Workers Union,
rep. by its General Secretary,
Smt. A.Danamma … Petitioner

and

The Regional Station for Forage
Production and Demonstration,
Ministry of Agriculture (Department
of Animal Husbandary and Dairying)
Pahadi Sharif, Via : Keshavgiri,
Hyderabad-500 005 & others … Respondents

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W.P.No.25206 of 2003

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the action of the respondents in not counting the service rendered by the members of the petitioner-union in the category of whole-time Daily Rated Farm Attendants for the purpose of pension and gratuity as arbitrary and illegal and consequently to direct the respondents to count half of the service spent by the members of the petitioner-union in the category of whole- time Daily Rated Farm Attendants as regular service in terms of OM.No.F.12(1)-EV/68, dated 14-5-1968 for the purpose of pension, gratuity etc.

The facts are not much in dispute. The members of the petitioner-union, who are 10 in number as shown at paragraph-3 of the writ affidavit, were appointed as Daily Rated Farm Attendants between 1-3-1971 and 28-5-1973. Further, they were put on the minimum of the pay scale with effect from 8-8-1989 and their services were regularized from 6-5-1994. After attaining the age of superannuation, they retired from service between 31-12-2001 and 31-12-2003. Now, it is their grievance that the service rendered by them as daily rated workers is not being counted for the purpose of pension and other retiral benefits.

Learned counsel for the petitioner, in this regard, relied upon O.M.No.F.12(1)-EV/68, dated 14-5-1968, whereunder Government of India issued orders allowing the benefit of counting half of the service paid out of contingencies as qualifying service towards pension at the

time of absorption in regular employment. Thereafter, a question arose as to whether the full of the service paid out of contingencies may also be allowed to be counted for the purpose of terminal gratuity. the matter has been examined by the Ministry of Finance and decided that half the service paid from contingencies will be allowed to be counted for the purpose of terminal gratuity under CCS (TS) Rules,1965. Learned counsel has brought to the notice of this Court, the Government of India's Orders in Central Civil Services (Pension) Rules,1972, which read as under:

> "**(1) Counting of service paid for contingencies with regular service.—**Under Article 368 of the C.S.R's (Rule 14) periods of service paid from contingencies do not count as qualifying service for pension. In some cases, employees paid from contingencies employed in types of work requiring services of whole-time workers and are paid on monthly rates of pay or daily rates computed and paid on monthly basis and on being found fit brought on to regular establishment. The question whether in such cases service paid from contingencies should be allowed to count for pension and if so to what extent has considered in the National Council and in pursuance of the recommendation of the Council, it has been decided that half the service paid from contingencies will be allowed to count toward pension at the time of absorption in regular employment subject to the following conditions, viz.,
>
> (a) Service paid from contingencies should have been in a job involving whole-time employment (and not part-time for a portion of the day).
>
> (b) Service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned, e.g., malis, chowkidars, khalasis, etc.
>
> (c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staffs in regular establishments.
>
> (d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.
>
> (e) Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies will be limited to the period after 1st January,1961 for which authentic records of service may be available.

(2) Counting of service paid from contingencies with regular service for purpose of benefit of terminal gratuity admissible under C.C.S.(T.S.) Rules,1965:--

1. The undersigned is directed to refer to the Ministry of Finance O.M.No.F.12(1)-EV/68, dated 14.5.1968 allowing the benefit of counting half of the service paid out of contingencies as qualifying service towards persons (sic. pension) at the time of absorption in regular employment, subject to the conditions laid down therein. A question has been raised whether full of the service paid out of contingencies may also be allowed to be counted for the purpose of terminal gratuity admissible under the C.C.S. (T.S.) Rules,1965 where the staff paid from contingencies is subsequently appointed on regular basis.
2. The matter has been examined in consultation with the Ministry of Finance (Department of Expenditure) and it has been decided that half the service paid from contingencies will be allowed to be counted for the purpose of terminal gratuity as admissible under the C.C.S. (T.S.) Rules,1965 where the staff paid from contingencies is subsequently appointed on regular basis. This benefit will be subject to the conditions laid down in the Ministry of Finance O.M. dated 18th May,1968 referred to above.
3. These orders would apply to persons, who are in service on the date of issue of this order or/are appointed thereafter.
4. Insofar as persons serving in the Indian Audit and Accounts Department are concerned, these orders issued after consultation with Controller and Auditor General of India."

From a reading of the above, it would indicate that 50% of the total length of service rendered by the members of the petitioner-union can be taken into consideration for the purpose of payment of gratuity, pension etc. Whereas, according to the petitioner, the respondents have not counted 50% of the service rendered by the members of the petitioner-union as daily rated workers. If such service is taken into consideration, they are entitled for pension, gratuity and other

benefits. Even in the counter affidavit filed by the 1st respondent, it is not denied that 50% of the temporary service rendered by the employees cannot be counted for the purpose of pension and terminal gratuity. Further, it is stated that the Ministry has examined the case in consultation with the Department of Personnel and Training, Government of India, which clarified the matter as under:

> "Since the casual employees are engaged for casual/seasonal nature and since they do not hold any post under the Government the services rendered by such employees, do not count for any purpose. However, as a special dispensation, the casual employees with temporary status, have been allowed to count 50% of service rendered by them under temporary status for pensionary purpose on their regularization against a group-D post. In all other cases, the casual service do not count for retirement benefits".

Once the facts and the rule position are not in dispute, the members of the petitioner-union are entitled for counting of 50% of the service rendered by them as temporary/daily rated workers. In fact, learned counsel for the petitioner also relied upon a Judgement of this Court in **GENERAL MANAGER v. SHAIK ABDUL KHADER**[1] wherein it was held that once temporary status is granted to a person, who is absorbed later on in regular service, carries forward the leave at his credit and also the service in full and half of the service rendered by him as casual labour before getting the temporary status has to be counted for pension.

In view of the above, the respondents are directed to consider the case of the members of the petitioner-union as referred to in paragraph-3 of the writ affidavit for counting the temporary service rendered by them for the purpose of granting pension etc., and pass appropriate orders, within a period of two months from the date of receipt of a copy of this order and communicate the same to the petitioner.

Accordingly, the Writ Petition is disposed of. No order as to

costs.

27-2-2007

Office to furnish
CC within one week
(B.O.)

prk

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[1] 2004(1) SLR 215